

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

FIRPO WYCOFF CARR,)
)
PLAINTIFF,)
)
vs.) CASE NO. 2:23-CV-01813-ODW-MAA
)
FEDERAL BUREAU OF)
INVESTIGATION, ET AL.,)
) Los Angeles, California
) JULY 18, 2023
DEFENDANTS.)
_____)

TELEPHONIC STATUS CONFERENCE
BEFORE THE HONORABLE MARIA A. AUDERO
UNITED STATES MAGISTRATE JUDGE

APPEARANCES: SEE NEXT PAGE
COURT REPORTER: RECORDED, COURTSMART
COURTROOM DEPUTY: NARISSA ESTRADA
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APPEARANCES:

FOR PLAINTIFF FIRPO WYCOFF CARR:

FIRPO WYCOFF CARR
PRO SE

FOR DEFENDANT FEDERAL BUREAU OF INVESTIGATION, ET AL.:

E. MARTIN ESTRADA
UNITED STATES ATTORNEY
BY: JILL S. CASSELMAN
ASSISTANT UNITED STATES ATTORNEY
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I N D E X

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JULY 18, 2023

PROCEEDINGS: TELEPHONIC STATUS CONFERENCE

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LOS ANGELES, CALIFORNIA; JULY 18, 2023

THE CLERK: COUNSEL, PLEASE STATE YOUR APPEARANCE
BEGINNING WITH THE PLAINTIFF.

MR. CARR: YES. THIS IS FIRPO WYCOFF CARR, PLAINTIFF IN
THIS MATTER.

THE COURT: GOOD MORNING, MR. CARR.

MR. CARR: GOOD MORNING, YOUR HONOR.

MS. CASSELMAN: GOOD MORNING, YOUR HONOR.

THIS IS ASSISTANT UNITED STATES ATTORNEY JILL CASSELMAN
ON BEHALF OF DEFENDANTS THE FEDERAL BUREAU OF INVESTIGATION
AND DEPARTMENT OF JUSTICE.

THE COURT: GOOD MORNING, MS. CASSELMAN.

SO, DO WE HAVE PANERA ON THE LINE?

(NO AUDIBLE RESPONSE.)

THE COURT: WELL, APPEARS NOT.

OKAY. ALL RIGHT. WELL, SO, WE'RE HERE BECAUSE MR. CARR
IN CONNECTION WITH HIS LAWSUIT ISSUED A MAP TO PANERA FOR TWO
THINGS – CCTV SECURITY VIDEO OF THE EVENTS THAT TOOK PLACE ON
NOVEMBER 26, 2022, SOMETIME BETWEEN 6:00 AND 8:00 P.M.;

AND ANY AND ALL CORRESPONDENCE AND DOCUMENTATION
RELATIVE TO THIS TIME PERIOD AND EVENTS THEREIN.

THIS IS IN CONNECTION WITH THE LAWSUIT THAT INVOLVED
MR. CARR'S ALLEGATIONS THAT ON THAT DAY HE WAS AT PANERA. AND
HE GOT UP TO GO DOWN – TWO DOORS DOWN TO A JAPANESE

1 RESTAURANT TO GRAB SOME TAKE-OUT. AND HE REQUESTED THAT A
2 SERVER WORKING AT PANERA KEEP AN EYE ON HIS LAPTOP AND HIS
3 OTHER PERSONAL BELONGINGS WHILE HE WENT -- AND SOME OTHER
4 PERSONAL BELONGINGS -- I DON'T MEAN TO IMPLY ALL OF HIS PERSONAL
5 BELONGINGS -- WHILE MR. CARR WENT TO PICK UP THE TAKE-OUT FOOD
6 FROM THE JAPANESE RESTAURANT. AND UPON HIS RETURN HE WAS
7 TOLD BY SOME I GUESS BYSTANDER OUTSIDE THAT SOMEBODY HAD
8 TAKEN HIS LAPTOP AND WHATEVER ELSE WAS ON THE TABLE.

9 AND MR. CARR BELIEVES THAT THE SERVER AT PANERA
10 CONSPIRED WITH THE FBI TO ALLOW THE FBI TO TAKE PLAINTIFF'S ITEMS
11 ALL PURSUANT -- AS I UNDERSTAND IT, AND I'M NOT QUITE SURE --
12 PURSUANT TO A SUBPOENA, A FISA WARRANT I SHOULD SAY THAT WAS
13 ISSUED BECAUSE APPARENTLY PLAINTIFF IS SUSPECTED OF BEING A SPY
14 FOR A FOREIGN GOVERNMENT.

15 AND -- NOW, I GUESS THE FBI STILL HAS THE COMPUTER -- I'M
16 NOT SURE -- BUT WAS ABLE TO ACTUALLY ACCESS IT AND ALLEGEDLY
17 DELETED FILES AFTER COPYING THEM IN AN EFFORT TO FIND
18 INCRIMINATING EVIDENCE AGAINST PLAINTIFF.

19 THAT'S GENERALLY A VERY, VERY, VERY HIGH LEVEL SUMMARY
20 OF THE CASE, MOST OF WHICH IS NOT RELEVANT TO WHAT WE'RE GOING
21 TO DO TODAY.

22 BUT JUST SO THAT WE HAVE A CLEAR RECORD, MR. CARR, DID I
23 ACCURATELY MAKE A VERY GENERAL STATEMENT OF YOUR
24 ALLEGATIONS?

25 MR. CARR: YES, YOU DID, YOUR HONOR. THANK YOU.

1 THE COURT: OKAY.

2 ALL RIGHT. SO, OF COURSE, THE CCTV SECURITY VIDEO MR.
3 CARR ALLEGES IS RELEVANT TO HIS CLAIMS AS ARE CORRESPONDENCE
4 RELATED TO THAT TIME AND EVENTS. AND BECAUSE OF THAT MR. CARR
5 HAS TRIED TO OBTAIN THAT THROUGH SUBPOENA FROM PANERA.

6 MY UNDERSTANDING IS YOU WERE ABLE TO OBTAIN THE CCTV
7 FOOTAGE BUT NOT THE DOCUMENTS.

8 WAS THAT CORRECT, MR. CARR?

9 MR. CARR: ESSENTIALLY. THE CCTV FOOTAGE I HAD TO COPY.
10 THEY DID NOT PROVIDE --

11 THE COURT: YES.

12 MR. CARR: -- IT FOR ME UNTIL LATER, JUST LAST WEEK.

13 BUT ESSENTIALLY THAT'S CORRECT.

14 AND THE DOCUMENTS SPECIFICALLY AS I SPOKE WITH THE
15 MANAGER HAS TO DO WITH THE FBI'S CORRESPONDENCE OR
16 DOCUMENTATION, EMAILS, ET CETERA.

17 THE COURT: RIGHT.

18 OKAY. BUT YOU -- IS IT CORRECT THAT YOU HAVE NOT
19 RECEIVED THAT -- THE DOCUMENTS YET?

20 MR. CARR: THAT IS CORRECT. YES, YOUR HONOR.

21 THE COURT: OKAY. BECAUSE AS YOU ARE AWARE BASED ON
22 MY ORDER I RECEIVED AN EMAIL FROM PANERA SAYING, "WE'VE MADE
23 ARRANGEMENTS TO BE COMPLIANT WITH THE SUBPOENA ON THIS DATE."
24 BUT I THINK -- I CAN'T REMEMBER THE EXACT DATE. BUT NEVERTHELESS.
25 AND, SO, YOU KNOW, "PLEASE TAKE THIS INFORMAL DISCOVERY

1 CONFERENCE OFF THE RECORD.”

2 SO, THAT’S WHY I’M ASKING -- IT SOUNDED LIKE THEY WERE
3 GOING TO BE COMPLIANT. BUT IT SOUNDS LIKE YOU’RE REPORTING TO
4 THE COURT THAT THEY HAVE NOT PRODUCED THE DOCUMENTS YET.

5 MR. CARR: THAT IS CORRECT. IN FACT, I HAVE THAT EMAIL IN
6 FRONT OF ME, YOUR HONOR. AND THE RELEVANT PARAGRAPH
7 INTERESTINGLY ENOUGH STATES THIS, AND I QUOTE:

8 “THE SUBPOENA WAS SENT TO OUR SURVEILLANCE VENDOR TO
9 FULFILL THE SUBPOENA REQUEST.”

10 AND THAT’S IT.

11 THERE IS NO MENTION OF THE DOCUMENTS.

12 THEN, THE NEXT PARAGRAPH STATES:

13 “HOPEFULLY THIS RESOLVES THE OUTSTANDING ISSUE OF THE
14 SUBPOENA,” WHICH IT DOES NOT.

15 AND MY MOTION TO COMPEL ADDRESSES THIS. AND THAT IT
16 WAS ONLY PARTIALLY FULFILLED AT BEST. BUT, NO, THE DOCUMENTS
17 HAVE NOT BEEN FORTHCOMING, YOUR HONOR.

18 THE COURT: OKAY.

19 ALL RIGHT. OKAY. SO, THAT PUTS US UP TO DATE.

20 LET ME ASK MS. CASSELMAN IF SHE HAS ANYTHING TO ADD
21 BEFORE I ADDRESS THE EMAIL THAT I RECEIVED -- WELL, LET ME JUST
22 ADDRESS THE EMAIL RECEIVED FROM MS. CASSELMAN, WHICH BASICALLY
23 SAYS, THIS IS ALL PREMATURE BECAUSE THE PARTIES HAVEN’T HELD
24 THEIR RULE 26(F) CONFERENCE. AND RULE 26(B)(1) PROVIDES THAT
25 DISCOVERY CAN’T PROCEED UNTIL AFTER THAT.

1 SO, THIS IS WHAT PROMPTED ME BY THE WAY TO CONVERT THE
2 INFORMAL DISCOVERY CONFERENCE INTO A STATUS CONFERENCE.

3 I DIDN'T WANT TO LEAVE YOU HANGING, MR. CARR. BUT I DO
4 WANT TO ADDRESS THE ARGUMENT THAT DEFENDANT RAISES AS TO
5 WHETHER THIS DISCOVERY IS PREMATURE.

6 BUT BEFORE WE GO THERE, LET ME ASK MS. CASSELMAN, DO
7 YOU HAVE ANYTHING TO ADD?

8 MS. CASSELMAN: I'D JUST LIKE TO ADD THAT THE
9 JURISDICTIONAL MOTION TO DISMISS THAT'S PENDING IS -- YOU KNOW,
10 THE HEARING WAS SUPPOSED TO BE SEVERAL WEEKS AGO. AND IT'S
11 BEEN SUBMITTED. AND I WOULD EXPECT AN ORDER ANY DAY DISPOSING
12 OF THE MATTER.

13 THE COURT: OKAY.

14 MS. CASSELMAN: I'M REGRETFULLY PICKING UP A LOT OF
15 YOUR HONOR'S TIME ON MY CASES THESE DAYS. I HOPE NOT TO DO SO.

16 THE COURT: NO, THAT'S OKAY. DON'T WORRY ABOUT IT.
17 THAT'S WHY I'M HERE.

18 BUT, OKAY. SO, LET'S TURN TO THE ISSUE -- TO THE
19 DIFFICULTY THAT I THINK YOU ARE FACING, MR. CARR, IN YOUR MOTION,
20 WHICH IS A PROCEDURAL ONE NOT EVEN ALLOWING ME TO GET TO THE
21 MERITS, WHICH IS RULE 26(B)(1) DOESN'T ALLOW DISCOVERY UNTIL THE
22 RULE 26(F) CONFERENCE HAS BEEN HELD. AND IT'S MY UNDERSTANDING
23 THAT ONE HAS NOT BEEN HELD.

24 SO -- DISCOVERY HASN'T EVEN STARTED YET. AND I
25 UNDERSTAND THAT, YOU KNOW, PANERA HAS CHOSEN TO RESPOND TO

1 YOUR MOTION, BUT UNTIL THERE IS -- UNTIL DISCOVERY IS ONGOING,
2 WHICH IT IS NOT PERMITTED AT THIS TIME, I DON'T -- I DON'T HAVE THE
3 ABILITY TO ADDRESS YOUR DISCOVERY MOTION.

4 MR. CARR: WELL -- EXCUSE ME. I'M SORRY, YOUR HONOR. I'LL
5 LET YOU FINISH.

6 THE COURT: YES. THAT WAS IT.

7 MR. CARR: OKAY.

8 I APPRECIATE YOU HEARING THIS AND ALL. AND THERE'S -- IT
9 IS QUITE INTERESTING TO ME THAT MS. CASSELMAN STATED THAT SHE'S
10 WAITING FOR THIS TO BE DISPOSED OF.

11 AND OF COURSE THE FACT THAT THE JUDGE IN THIS CASE
12 JUDGE WRIGHT DID NOT WISH TO HEAR HER PRESENT THESE IN PERSON I
13 THINK SPEAKS TO THE MERITS OF HER MOTION TO DISMISS.

14 FOR EXAMPLE, SHE STATED AND UNFORTUNATELY THAT
15 STATES THAT HOUR MEET AND CONFER STARTED AROUND APRIL 24TH OR
16 25TH I BELIEVE WHEN I ISSUED THREE EMAILS STATING IN HER OWN
17 WORDS EMAILS FROM HER THAT IT WOULDN'T START UNTIL I BELIEVE IT
18 WAS TUESDAY, MAY 4TH. SO --

19 THE COURT: LET ME -- LET ME --

20 MR. CARR: AND --

21 THE COURT: -- MR. CARR, I'M STARTING TO --

22 MR. CARR: WHAT -- AND, SO, IF I COULD JUST --

23 THE COURT: HOLD ON. HOLD ON.

24 MR. CARR: -- FINISH -- IF I COULD -- I'M SURE SHE'LL LET YOU

25 --

1 THE COURT: NO. BECAUSE YOU'RE MAKING AN ARGUMENT ON
2 SOMETHING THAT'S --

3 MR. CARR: SO --

4 THE COURT: MR. CARR, I'M NOT GOING TO LET --

5 MR. CARR: WELL --

6 THE COURT: YOU NEED TO STOP.

7 MR. CARR: -- I --

8 THE COURT: THE --

9 MR. CARR: NO. NO. I'M NOT. I'M GOING TO CONTINUE.

10 THE COURT: MR. CARR --

11 MR. CARR: I'M GOING TO CONTINUE.

12 THE COURT: MR. CARR, YOU --

13 MR. CARR: I'M GOING TO CONTINUE.

14 SO, WHAT I'M GOING TO DO --

15 THE COURT: MR. CARR, YOU ARE MAKING ARGUMENTS
16 REGARDING THE MOTION TO DISMISS, WHICH IS NOT BEFORE ME. AND I
17 WILL NOT HEAR THEM.

18 MR. CARR: OH, I SEE.

19 THE COURT: SO --

20 MR. CARR: YES. OKAY.

21 ALL RIGHT.

22 WELL --

23 THE COURT: THE ONLY THING THAT I WANTED TO -- HOLD ON.

24 MR. CARR: YES, MA'AM. YES, YOUR HONOR.

25 THE COURT: I DON'T WANT TO HEAR ABOUT THE MOTION TO

1 DISMISS. IT'S NOT BEFORE ME. IT'S NOT SOMETHING THAT AFFECTS
2 WHAT I NEED TO DO HERE WITH YOUR MOTION TO COMPEL.

3 IT IS NOT THAT I HAVE NO INTEREST IN YOUR CASE. I WANT TO
4 MAKE SURE THAT IT'S VERY CLEAR. BUT IT IS THAT I JUST HAVE NO
5 JURISDICTION OVER THAT MOTION TO DISMISS. AND, SO, IT'S FUTILE FOR
6 US TO DISCUSS IT. SO, WE'RE NOT GOING TO DISCUSS IT BECAUSE IT'S
7 NOT A GOOD USE OF THE COURT'S RESOURCES.

8 SO, LET'S JUST -- LET'S BRING THIS BACK TO WHERE WE NEED
9 TO PUT THIS DISCUSSION.

10 AND THAT IS THAT NO RULE -- REGARDLESS OF WHAT MS.
11 CASSELMAN MAY HAVE SAID WITH RESPECT TO THE PENDING MOTION TO
12 DISMISS, THE PARTIES HAVE NOT YET HELD THE RULE 26(F) CONFERENCE.

13 IS THAT RIGHT?

14 MR. CARR?

15 MR. CARR: THAT IS CORRECT. YES, YOUR HONOR.

16 THE COURT: OKAY.

17 OKAY. THEN, DO YOU UNDERSTAND -- I UNDERSTAND YOU'RE
18 REPRESENTING YOURSELF. AND, SO, I WANT TO MAKE SURE THAT WE
19 LEVEL THE PLAYING FIELD. I'M HAPPY TO EXPLAIN ALL THE PROCEDURES
20 TO YOU.

21 DO YOU UNDERSTAND WHY I CAN'T ADDRESS THIS MOTION?

22 MR. CARR: YES, I DO, YOUR HONOR.

23 THE COURT: OKAY. OKAY.

24 ALL RIGHT. SO, HERE IS WHAT WE CAN -- THERE'S A COUPLE OF
25 WAYS THAT WE CAN GO ON THIS.

1 NUMBER ONE, I CAN ISSUE AN ORDER DENYING YOUR MOTION
2 WITHOUT PREJUDICE FOR YOU TO BRING IT LATER IF IT'S STILL AN ISSUE.

3 I DON'T KNOW -- A LOT OF PARTIES DON'T LIKE TO HAVE
4 MOTIONS DENIED. SOME PARTIES DON'T CARE. SO, I'M -- YOU KNOW, IT'S
5 UP TO YOU.

6 OR YOU CAN SIMPLY WITHDRAW THE MOTION. AND YOU WILL
7 ALWAYS BE ABLE TO BRING IT AGAIN WHEN IT'S THE APPROPRIATE TIME.

8 SO, HOW WOULD YOU LIKE TO PROCEED?

9 MR. CARR: LET'S SEE. I WROTE BOTH THOSE DOWN. AND
10 THANK YOU.

11 AND, FIRST OF ALL, I WANT TO APOLOGIZE. I THOUGHT THAT
12 WAS MS. CASSELMAN SPEAKING. YOUR VOICE IS -- AT LEAST ON MY
13 PHONE SOUND SIMILAR. SO, I APOLOGIZE IF THAT WAS YOU THAT I WAS
14 SPEAKING OVER, YOUR HONOR.

15 THE COURT: YEAH. THAT WAS -- THAT WAS ME.

16 MR. CARR: OH, MY GOD. OKAY.

17 THE COURT: IT'S OKAY. IT'S -- IT'S VERY HARD WHEN WE'RE
18 DOING THIS BY PHONE. AND, SO, I -- YOU KNOW, I JUST -- I'M GOING TO
19 USE THIS AS AN OPPORTUNITY TO WHEN PEOPLE START TO SPEAK OVER
20 EACH OTHER, I THINK WHEN WE DO THIS BY PHONE, THE BEST APPROACH
21 IS EVERYBODY STOP TALKING. AND THEN WE CAN RESUME. AND I CAN
22 HANDLE WHO IS GOING TO TALK NEXT.

23 SO, LET'S MAKE THAT A RULE FOR US. IT'S NOT A LOCAL RULE,
24 BUT I THINK IT WILL BE A VERY HELPFUL WAY FOR US TO APPROACH THIS.

25 SO, DON'T WORRY, MR. CASSELMAN. I -- YOU KNOW, LET'S

1 JUST NOT TALK -- LET'S NOT TALK OVER EACH OTHER. AND LET'S JUST --
2 EVERYBODY MAKE AN EFFORT FOR THAT.

3 YOU WERE SAYING.

4 MR. CARR: OH, YES. THANK YOU FOR THAT, YOUR HONOR.
5 AND, AGAIN, PLEASE ACCEPT MY HUMBLE APOLOGIES.

6 I -- IF I UNDERSTAND YOU CORRECTLY, AND I THINK IT'S
7 PRETTY STRAIGHTFORWARD. IT SAYS YOU CAN -- YOU HAVE STATED YOU
8 CAN EITHER DENY THE MOTION WITHOUT PREJUDICE MEANING THAT I CAN
9 BRING IT UP LATER, OR I CAN WITHDRAW IT AND STILL WITH THE OPTION
10 TO BRING IT UP LATER.

11 WHEN YOU SAY LATER, DO YOU MEAN AFTER A DECISION HAS
12 BEEN MADE WITH REGARD TO THE DISMISSAL?

13 THE COURT: I MEAN LATER WHEN DISCOVERY IS ALLOWED TO
14 BEGIN.

15 MR. CARR: OKAY.

16 IS THAT USUALLY --

17 THE COURT: THE PARTIES WILL ADDRESS -- THE PARTIES WILL
18 ADDRESS THAT, RIGHT.

19 I MEAN, WHAT IT TAKES FOR DISCOVERY TO BEGIN IS THAT THE
20 PARTIES HAVE TO HOLD THE RULE 26(F) CONFERENCE.

21 AND, SO, UNTIL THAT HAPPENS YOU CAN'T START DISCOVERY.

22 AND, SO, WHAT I'M SAYING IS I WILL HEAR IT ONCE DISCOVERY
23 BEGINS.

24 MR. CARR: I SEE.

25 THANK YOU FOR THAT.

1 MY SPECIFIC QUESTION TO THAT IS CAN DISCOVERY BEGIN
2 PENDING A MOTION TO DISMISS?

3 THE COURT: DISCOVERY CANNOT BEGIN UNTIL THE PARTIES
4 HOLD THE RULE 26(F) CONFERENCE ABSENT AN ORDER OF THE COURT
5 AND A STIPULATION OF THE PARTIES.

6 I HAVE NOT ISSUED AN ORDER ALLOWING YOU TO START
7 DISCOVERY. I BELIEVE THAT JUDGE WRIGHT HAS NOT ISSUED AN ORDER
8 ALLOWING YOU TO START DISCOVERY. AND MY UNDERSTANDING IS YOU
9 DON'T HAVE A STIPULATION FROM THE OTHER SIDE ALLOWING YOU TO
10 START DISCOVERY.

11 MR. CARR: OH, I SEE. OKAY. THANK YOU. THAT'S CORRECT. I
12 DON'T. AND THAT'S JUST MY NOVELTY REGARDING RULE 26(F).

13 I DID READ WHAT MS. CASSELMAN STATED. AND I THOUGHT TO
14 MYSELF QUITE FRANKLY, UH OH.

15 SO, WHAT I WILL DO AS I THINK OUT LOUD HERE IS TAKE A LOOK
16 AT THAT FIRST. AND INSTEAD OF PUTTING THE CART BEFORE THE HORSE
17 AS I HAVE DONE HERE WITH THIS MOTION TO COMPEL.

18 I AM HOPING THAT WHEN I LOOK AT RULE 26(F) THAT IT WILL
19 STATE – IT WILL GIVE ME SOME TIME FRAME OR WHERE IN THE FLOW OF
20 THINGS, WHERE IN THE PROCESS I CAN ACTUALLY BRING THIS MATTER UP
21 AGAIN.

22 SO, IN LIEU OF THAT, IF YOU WOULD LIKE TO SHARE WITH ME
23 THE PROCESS, THE PROCEDURE. I KNOW WHAT YOU'VE STATED THUS
24 FAR. BUT I SUPPOSE MY QUESTION BOTTOM LINE IS -- AND I REALIZE I
25 HAVE TO CONVENE OR MEET WITH COUNSEL SO THAT WE CAN GET THIS

1 STIPULATED.

2 SO, I HAVE TWO QUESTIONS.

3 WHAT IF COUNSEL AGREES OR DISAGREES OR DOESN'T AGREE
4 WITH ME WITH THE STIPULATION IS MY FIRST QUESTION.

5 AND MY SECOND QUESTION IS HOW IS THAT CONNECTED WITH
6 THE MOTION TO DISMISS?

7 THE COURT: OKAY. SO, I AM NOT IN A POSITION WHERE I CAN
8 GIVE YOU LEGAL ADVICE. AND THIS IS A VERY FINE LINE.

9 SO, BEFORE I SAY -- BEFORE I ANSWER YOUR QUESTION,
10 WHICH I WANT TO ANSWER SO THAT YOU ARE NOT PUT AT A
11 DISADVANTAGE MERELY BECAUSE YOU'RE NOT AN ATTORNEY.

12 BUT I DO WANT TO ASK MS. CASSELMAN, DO YOU HAVE ANY
13 CONCERNS WITH MY KIND OF HELPING TO ORIENT MR. CARR?

14 MS. CASSELMAN: NO, YOUR HONOR. YOU'RE FINE TO DO THAT.

15 I JUST -- I THINK THAT YOU -- YOU KNOW THAT THE POSITION OF
16 THE DEFENDANTS AND ALL FEDERAL AGENCIES IS WE DON'T AGREE TO
17 UNDERGO DISCOVERY IN CASES WHERE OUR POSITION IS THERE'S NO
18 JURISDICTION.

19 SO, I'M NOT -- I'M NOT AMENABLE TO STIPULATING. AND, SO,
20 YOU MAY INSTRUCT HIM WITH THAT IN MIND.

21 (LAUGHTER.)

22 MS. CASSELMAN: -- GIVE HIM SOME ADVICE --

23 THE COURT: WELL, THAT'S -- AND THAT'S -- THAT'S PERFECTLY
24 FINE. AND THAT'S WHAT I NEEDED TO HEAR FROM YOU SO THAT IT DIDN'T
25 COME FROM ME, ALTHOUGH I HAPPEN TO KNOW THAT.

1 SO, HERE'S HOW IT WORKS. HERE'S HOW IT WORKS, MR. CARR.
2 YOU HAVE A RULE THAT SAYS YOU CAN'T CONDUCT DISCOVERY
3 UNTIL YOU HOLD A RULE 26(F) CONFERENCE.

4 YOU HAVE THE ABILITY -- AND THE RULE 26(F) CONFERENCE
5 HAS SOME TIMING ISSUES WITH IT. IT CAN -- YOU CAN START -- IT CAN --
6 YOU CAN HOLD THE -- YOU CAN HOLD THE RULE 26 CONFERENCE AS SOON
7 AS PRACTICABLE.

8 BUT NO LATER THAN 21 DAYS BEFORE A SCHEDULING
9 CONFERENCE IS HELD.

10 OKAY?

11 MR. CARR: OKAY.

12 THE COURT: SO, ESSENTIALLY -- AND THAT'S IN RULE 26(F)(1).
13 I'M JUST KIND OF READING TO YOU WHAT THAT RULE SAYS.

14 SO, MY UNDERSTANDING -- AND CORRECT ME IF I'M WRONG,
15 MR. CARR OR MS. CASSELMAN, THERE HAS NOT BEEN ANY ORDER SAYING
16 FROM JUDGE WRIGHT SETTING A SCHEDULING CONFERENCE.

17 IS THAT CORRECT, MS. CASSELMAN?

18 MS. CASSELMAN; YES, YOUR HONOR.

19 THE COURT: OKAY.

20 SO, TO COMMENCE A RULE 26(F) CONFERENCE BETWEEN YOU
21 AND DEFENDANT, YOU HAVE TO COME TO -- YOU HAVE TO COME TO AN
22 AGREEMENT WITH DEFENDANT AS TO A DATE OF WHEN YOU'RE GOING TO
23 HOLD THAT CONFERENCE.

24 WHAT YOU HAVE JUST HEARD MS. CASSELMAN SAY IS THAT IT
25 IS THE POLICY AND PRACTICE OF FEDERAL AGENCIES TO NOT

1 PARTICIPATE IN A RULE 26 CONFERENCE UNTIL RESOLUTION OF ANY
2 PENDING JURISDICTIONAL MOTION, WHICH IS WHAT YOU HAVE PENDING
3 RIGHT NOW.

4 SO, WHAT IS LIKELY GOING TO HAPPEN HERE --

5 AND, MS. CASSELMAN, FEEL FREE TO JUMP IN AND SAY THAT
6 THAT'S NOT GOING TO HAPPEN IF I'M WRONG.

7 BUT YOU MAY PICK UP THE PHONE, MR. CARR, OR SEND AN
8 EMAIL TO MS. CASSELMAN AND SAY, HEY, LET'S HOLD OUR RULE 26(F)
9 CONFERENCE. AND MOST LIKELY MS. CASSELMAN IS GOING TO SAY,
10 NOPE, WE DON'T HAVE TO UNDER THE RULES. AND WE'RE NOT GOING TO
11 UNTIL WE HAVE TO.

12 AND WE DON'T HAVE TO BECAUSE RIGHT NOW NO RULE 26 --
13 NO RULE 16 CONFERENCE -- SCHEDULING CONFERENCE HAS BEEN SET
14 BY THE JUDGE.

15 WHICH IS THE ONLY TIMING RULE THAT EXISTS AS TO THE RULE
16 26 (F) CONFERENCE IS IT HAS TO HAPPEN NO LATER THAN 21 DAYS
17 BEFORE THE SCHEDULING CONFERENCE.

18 SINCE NO SCHEDULING CONFERENCE IS ON THE CALENDAR OR
19 ON THE DOCKET, THERE IS NO DATE BY WHICH DEFENDANTS ARE
20 REQUIRED TO HOLD AND PARTICIPATE IN A RULE 26(F) CONFERENCE.

21 DOES THAT MAKE SENSE, MR. CARR?

22 MR. CARR: YES, IT DOES. YES, IT DOES, YOUR HONOR. AND
23 THANK YOU SO MUCH.

24 I --

25 THE COURT: YOU'RE WELCOME.

1 MR. CARR: YES. I COMPREHEND IT ALL.

2 MY QUESTION -- THEN IT'S UNSURPRISING THAT FEDERAL
3 AGENCIES AND MS. CASSELMAN REPRESENTING THEM WOULD NOT
4 AGREE TO IT. THAT'S -- FOR A NOVICE I THINK THAT THAT IS -- THAT'S
5 PRETTY CLEAR.

6 BUT I SUPPOSE MY LAST QUESTION TO YOU IS, YOUR
7 HONOR -- AND THANK YOU SO MUCH. I FULLY COMPREHEND EVERYTHING
8 YOU SAID. AND I'VE BEEN TAKING NOTES.

9 MY LAST QUESTION TO YOU I BELIEVE WILL BE THE
10 SCHEDULING CONFERENCE, IS THAT ISSUED BY THE COURT -- IN THIS
11 CASE JUDGE WRIGHT?

12 THE COURT: YES. JUDGE WRIGHT IS THE ONE WHO IS GOING
13 TO ISSUE AN ORDER SETTING A DATE BY WHICH HE'S GOING TO HOLD THE
14 SCHEDULING CONFERENCE.

15 MR. CARR: I SEE. OKAY.

16 THE COURT: THAT IS NOT SOMETHING THAT I WILL DO
17 BECAUSE HE IS THE ONE WHO -- IT'S JUDGE WRIGHT WHO WILL SET THE
18 SCHEDULE IN THIS CASE.

19 MR. CARR: UNDERSTOOD.

20 SO, I SUPPOSE ALL OF THIS IS CONTINGENT -- THE SCHEDULING
21 CONFERENCE OR POTENTIAL -- OR PROSPECTIVE SCHEDULING
22 CONFERENCE IS CONTINGENT UPON THE DECISION ON THE MOTION TO
23 DISMISS, WHICH I'M HOPING WILL BE DENIED, OF COURSE.

24 IS THAT CORRECT?

25 THE COURT: YOU KNOW, IT DOESN'T HAVE TO BE. IT IS NOT A

1 YES ABSOLUTELY NECESSARILY IT IS CONTINGENT UPON THE DECISION
2 ON THE MOTION TO DISMISS.

3 THERE IS NO RULE THAT SAYS THAT JUDGE WRIGHT CAN'T SET
4 THE SCHEDULING CONFERENCE DATE WHILE THE MOTION IS PENDING.

5 IN FACT, RULE 16 PROVIDES THE TIMING FOR JUDGE WRIGHT TO
6 ISSUE THE SCHEDULING ORDER – NOT THE SCHEDULING CONFERENCE
7 ORDER BUT THE ACTUAL SCHEDULE FOR THE CASE.

8 SO, YOU SHOULD READ RULE 16(B) TO UNDERSTAND THE
9 TIMING OF EVERYTHING.

10 BUT UNTIL -- UNTIL THERE IS AN OBLIGATION TO HOLD A RULE
11 16 -- I'M SORRY -- YEAH, A RULE 16 CONFERENCE, YOU KNOW, JUDGE
12 WRIGHT MAY DECIDE -- AND I DON'T KNOW HOW HE ADDRESSES THESE
13 THINGS, BUT HE MAY DECIDE THAT HE'S -- IF HE DOESN'T HAVE TO, HE'S
14 NOT GOING TO SET A SCHEDULING CONFERENCE UNTIL THE MOTION TO
15 DISMISS IS RULED UPON BECAUSE IT'S ALL TOGETHER POSSIBLE THAT
16 THE CASE WILL BE DISMISSED ON JURISDICTIONAL ISSUES.

17 I KNOW YOU HOPE THAT NOT TO BE THE CASE. BUT GIVEN THE
18 NATURE OF THE MOTION IT'S POSSIBLE.

19 AND, SO, IT WOULD NOT BE A GOOD USE OF THE COURT'S
20 RESOURCES TO SET A SCHEDULING CONFERENCE BEFORE THE MOTION
21 TO DISMISS.

22 THAT DOESN'T MEAN THAT JUDGE WRIGHT CAN'T DO THAT. BUT
23 HE IS NOT REQUIRED ONE WAY OR THE OTHER.

24 DOES THAT MAKE SENSE?

25 MR. CARR: YES, IT DOES.

1 AND THANK YOU AGAIN --

2 THE COURT: YOU'RE WELCOME.

3 MR. CARR: -- FOR THAT WONDERFUL EXPLANATION.

4 THE NEXT QUESTION IS -- AND I GUESS THE LAST ONE WAS NOT
5 THE ULTIMATE QUESTION.

6 THE NEXT QUESTION IS WILL I BE ABLE TO OR AM I ALLOWED
7 TO FILE A MOTION REQUESTING THE SCHEDULING ORDER, OR IS THAT
8 SOMETHING THAT THE JUDGE -- IN THIS CASE, AGAIN, JUDGE WRIGHT --
9 DECIDES ON ITS OWN -- ON HIS OWN I SHOULD SAY?

10 THE COURT: YOU CAN ASK THE COURT FOR ANYTHING YOU
11 WOULD LIKE. THAT DOESN'T MEAN YOU WILL GET IT.

12 (LAUGHTER.)

13 MR. CARR: I UNDERSTAND.

14 THE COURT: BUT THE WAY IT WORKS IN CIVIL LITIGATION IS IF
15 YOU WANT SOMETHING FROM THE COURT THE WAY YOU DO IT IS YOU FILE
16 A MOTION. OR SOMETIMES DEPENDING ON WHAT IT IS YOU'RE ASKING
17 FOR, SOMETIMES IT'S AN APPLICATION.

18 BUT IT DOESN'T MATTER. FOR PURPOSES OF LET'S CALL IT A
19 MOTION.

20 MR. CARR: OKAY.

21 THE COURT: SO, I SUPPOSE YOU COULD FILE A MOTION
22 REQUESTING JUDGE WRIGHT TO ISSUE A SCHEDULING ORDER. BUT, YOU
23 KNOW, JUDGE WRIGHT KNOWS THE RULES. HE KNOWS WHEN HE'S
24 SUPPOSED TO DO IT. I'M NOT SURE IT WILL GET YOU VERY FAR.

25 ON THE OTHER HAND, YOU KNOW, IT COULD. I DON'T KNOW.

1 MR. CARR: I SEE. OKAY.

2 WELL, THE WORST HE COULD DO IS DENY IT, RIGHT? -- OR SAY
3 NO. SO, THAT'S -- THAT'S GOOD TO KNOW.

4 OKAY. SO, RULE 16(B), SCHEDULING ORDER -- HOW THEY RULE
5 26(F) DEALING WITH THE CONFERENCE NO LATER THAN -- NO LATER THAN
6 21 DAYS. I SEE THAT.

7 OKAY. I THINK I HAVE THE COMPLETE PICTURE NOW, YOUR
8 HONOR.

9 THANK YOU SO MUCH ONCE AGAIN FOR YOUR EXPLANATIONS.

10 THE COURT: OKAY. SO, WHAT WOULD YOU LIKE TO DO?

11 MR. CARR: I THINK I WILL WITHDRAW THE MOTION COMPELLING
12 DOCUMENTS OR THE PRODUCTION OF DOCUMENTS. IT LOOKS BETTER
13 THAN IT BEING DENIED -- (LAUGHTER) -- SO, I'LL GO FOR THAT.

14 THE COURT: OKAY.

15 ALL RIGHT. THEN WOULD YOU -- I CAN -- WOULD YOU LIKE TO
16 FORMALLY REQUEST THAT I ORDER IT WITHDRAWN NOW? OR DO YOU
17 WANT TO FILE SOMETHING?

18 IT'S UP TO YOU. YOU CAN MAKE AN ORAL MOTION. I SUSPECT
19 MS. CASSELMAN WILL NOT OPPOSE IT.

20 ALTHOUGH, IT'S CERTAINLY MS. CASSELMAN -- WELL, I GUESS
21 MS. CASSELMAN WAS SAYING IT'S PREMATURE.

22 BUT YOU CAN MAKE AN ORAL MOTION IF YOU WOULD LIKE, MR.
23 CARR. IT'S UP TO YOU.

24 MR. CARR: YES, I'D LIKE -- YES, I'D LIKE TO DO THAT AND MAKE
25 THE ORAL MOTION HERE ON THE RECORD FOR FORMAL WITHDRAWAL OF

1 THE MOTION TO COMPEL.

2 THE COURT: OKAY.

3 MS. CASSELMAN, ANY OPPOSITION? OBJECTION?

4 MS. CASSELMAN: NO, I DON'T OBJECT.

5 THE COURT: OKAY.

6 MR. CARR: I WOULD --

7 THE COURT: AND --

8 MR. CARR: I WOULD LIKE TO ADD SOMETHING, YOUR HONOR.

9 AND THAT IS THAT'S WITH THE UNDERSTANDING THAT IT'S
10 WITHOUT PREJUDICE.

11 THE COURT: THAT IS WHAT I WOULD ORDER, YES.

12 MR. CARR: OKAY. YES. OKAY. I'M ALL FOR IT 100 PERCENT.

13 THE COURT: OKAY.

14 IN LIGHT OF THE DISCUSSION WITH THE PARTIES REGARDING
15 THE TIMING OF THE MOTION AND THE RULES REGARDING WHEN
16 DISCOVERY MAY BEGIN, THE COURT FINDS THAT GOOD CAUSE APPEARS
17 FOR THE WITHDRAWAL -- FOR THE GRANTING OF A MOTION TO WITHDRAW
18 PETITIONER -- SORRY, PLAINTIFF'S MOTION TO COMPEL PANERA TO
19 COMPLY WITH -- AND GRANT THE REQUEST.

20 SO, I WILL ORDER THE MOTION TO BE DENOTED AS WITHDRAWN
21 WITHOUT PREJUDICE.

22 MR. CARR: THANK YOU SO MUCH, YOUR HONOR. I APPRECIATE
23 IT.

24 AND I APPRECIATE YOUR ATTENDANCE AND PATIENCE. MS.
25 CASSELMAN, AS WELL.

1 THE COURT: WELL, YOU'RE VERY WELCOME, MR. CARR.

2 GOING FORWARD, LET ME EXPLAIN. I AM YOUR -- I AM YOUR
3 DISCOVERY JUDGE. AND I AM YOUR SETTLEMENT CONFERENCE JUDGE. I
4 AM AVAILABLE AS YOUR SETTLEMENT CONFERENCE JUDGE.

5 THE PARTIES WILL HAVE AN OPPORTUNITY TO TELL JUDGE
6 WRIGHT HOW THEY WANT TO CONDUCT ALTERNATIVE DISPUTE
7 RESOLUTION WHICH JUDGE WRIGHT USUALLY ORDERS.

8 AND YOU'LL BE GIVEN THREE CHOICES. ONE OF THEM WILL BE
9 PRIVATE MEDIATION. ONE OF THEM WILL BE MEDIATION THROUGH THE
10 COURT'S PANEL WHICH HAS A CHARGE OF -- PRIVATE MEDIATION OF
11 COURSE IS YOU WILL PAY.

12 THE COURT HAS AN ADR PANEL WHICH IS MADE UP OF
13 MEDIATORS AND LAWYERS WHO AREN'T -- WHO OFFER SOME OF THEIR
14 HOURS PRO BONO TO TRY TO RESOLVE CASES AND AT A VERY LOW RATE.

15 OR YOU'LL HAVE THE CHOICE OF A MAGISTRATE JUDGE WHICH
16 WOULD BE ME BECAUSE I'M THE ONE THAT'S ASSIGNED TO YOUR CASE.

17 SO, THIS IS NOT TO SAY THAT YOU NEED TO GO ONE WAY OR
18 THE OTHER. I JUST WANT YOU TO KNOW THAT THOSE ARE THE TWO
19 FUNCTIONS THAT I FULFILL IN THIS CASE ABSENT IF THE PARTIES SHOULD
20 CONSENT TO ME FOR ALL PURPOSES. BUT THAT'S NOT THE ISSUE RIGHT
21 NOW.

22 SO, I WOULD LIKE TO ADDRESS BOTH OF THOSE THINGS VERY
23 QUICKLY.

24 AND I KNOW, MS. CASSELMAN, YOU'RE HOPING THAT NONE OF
25 THIS WILL COME TO FRUITION BECAUSE YOU'RE HOPING THAT THE

1 MOTION WILL BE DISMISSED – THAT THE CASE, SORRY, WILL BE
2 DISMISSED ON YOUR JURISDICTIONAL MOTION.

3 BUT IN THE EVENT THAT IT'S NOT, I WANT TO MAKE SURE THAT
4 WHEN THINGS START ROLLING, MR. CARR IS -- YOU KNOW, HAS AN
5 UNDERSTANDING OF HOW THIS IS GOING TO PLAY OUT.

6 I KNOW YOU ARE A PRO AT THIS, MS. CASSELMAN. BUT
7 MR. CARR MAY NEED SOME DIRECTION WITH RESPECT TO HOW ALL OF
8 THIS WORKS.

9 SO, MR. CARR, WHEN DISCOVERY STARTS, IF -- YOU WILL OF
10 COURSE HANDLE DISCOVERY WITH PANERA AND ANY OTHER THIRD
11 PARTY AND OF COURSE WITH THE PARTIES IN THIS CASE.

12 IF THERE IS A DISPUTE SUCH AS THIS THAT BROUGHT US HERE
13 TODAY, YOUR DISPUTE WITH PANERA, IF THERE IS A DISPUTE ON ANY
14 DISCOVERY ISSUE, BEFORE YOU FILE A MOTION YOU HAVE TO COMPLY
15 WITH RULE -- LOCAL RULE 37 WHICH TELLS YOU THAT YOU HAVE TO MEET
16 AND CONFER. AND IT TELLS YOU HOW YOU HAVE TO MEET AND CONFER
17 WITH THE OTHER SIDE BEFORE GETTING THE COURT INVOLVED.

18 AND THEN THERE'S ALSO MY LOCAL REQUIREMENTS, MY
19 PERSONAL REQUIREMENTS. AND YOU CAN FIND THOSE IN THE COURT'S
20 WEBSITE. JUST FIND JUDGES' REQUIREMENTS, THE TAB FOR JUDGE'S
21 REQUIREMENTS. AND LOOK FOR MY NAME. AND CLICK ON THAT. AND
22 THAT WILL GIVE YOU ALL OF MY REQUIREMENTS FOR ANYTHING THAT
23 COMES BEFORE ME.

24 ONE OF THE THINGS THAT YOU WILL FIND IS IF THERE'S A
25 DISCOVERY DISPUTE BEFORE FILING A MOTION, THE PARTIES HAVE TO

1 PARTICIPATE IN AN INFORMAL DISCOVERY CONFERENCE, WHICH IS WHAT I
2 SET THE FIRST -- WHEN I FIRST OBTAINED -- RECEIVED YOUR MOTION,
3 RIGHT --

4 MR. CARR: YES.

5 THE COURT: -- I SET AN INFORMAL DISCOVERY CONFERENCE.

6 MR. CARR: YES.

7 THE COURT: SO, I JUST WANT TO REMIND YOU OF THOSE
8 OBLIGATIONS BECAUSE IF YOU DON'T FOLLOW THOSE, I WILL STRIKE
9 YOUR MOTION.

10 THIS TIME I DIDN'T BECAUSE I REALIZED THAT YOU WERE
11 PROCEEDING, YOU KNOW, REPRESENTING YOURSELF. AND I
12 UNDERSTAND THAT, YOU KNOW, OFTEN THESE RULES ARE A LITTLE BIT
13 DIFFICULT TO FOLLOW.

14 BUT NOW THAT I'M MAKING IT VERY CLEAR TO YOU, MR. CARR.

15 MR. CARR: YES.

16 THE COURT: YOU CAN'T FILE A MOTION -- A DISCOVERY
17 MOTION WITHOUT GOING TO ME FIRST.

18 AND THE PURPOSE OF THAT IS TO GET TO -- TO SEE IF I CAN
19 HELP THE PARTIES RESOLVE THE DISPUTE BEFORE EVERYBODY SPENDS
20 A LOT OF TIME AND MONEY ON FILING MOTIONS.

21 OKAY?

22 MR. CARR: YES, YOUR HONOR. THANK YOU AGAIN FOR THAT.

23 I'LL SAVE ANY OTHER QUESTIONS I HAVE. I'LL READ ALL THESE
24 FIRST.

25 AS I MENTIONED, RULE 26(F), RULE 16(B) AND ALSO LOCAL RULE

1 27 AS WELL AS YOUR -- YOUR RULES UNDER -- I THINK -- THERE.

2 I'VE ACTUALLY LOOKED -- I'VE READ YOUR ENTIRE PAGE.

3 THE COURT: OKAY.

4 MR. CARR: I HAVEN'T MEMORIZED IT. BUT I DO -- I AM FAMILIAR
5 WITH IT SOMEWHAT. SO, THANK YOU VERY MUCH FOR THAT.

6 THE COURT: OKAY.

7 AND THEN THE ONLY OTHER THING THAT I -- YOU KNOW,
8 WEARING MY SETTLEMENT CONFERENCE HAT. IF THE PARTIES SHOULD
9 DESIRE AT ANY POINT IN YOUR CASE TO SEE IF I CAN HELP YOU RESOLVE
10 THE CASE, PLEASE FEEL FREE TO REACH OUT TO ME THROUGH MY
11 COURTROOM DEPUTY. YOU KNOW HER EMAIL ADDRESS IS MY MAA
12 UNDERSCORE CHAMBERS ADDRESS.

13 AND I WILL BE MORE THAN HAPPY TO ASSIST THE PARTIES.

14 OTHERWISE, I THINK WE ARE DONE HERE.

15 AND I -- WHILE I AM HAPPY TO ASSIST IN ANY WAY THAT I CAN
16 IN YOUR CASE, I HOPE THAT YOU FOLKS CAN RESOLVE ALL YOUR
17 DISCOVERY DISPUTES WITHOUT COURT INTERVENTION.

18 BUT IF YOU CAN'T, PLEASE KNOW THAT I AM HERE.

19 MR. CARR: THANK YOU VERY MUCH, YOUR HONOR.

20 I APPRECIATE YOUR HELP AND YOUR CONSIDERATION EVEN
21 THIS INFORMAL, IF YOU WILL, DISCOVERY CONFERENCE.

22 SO, I CAN'T THANK YOU ENOUGH.

23 THE COURT: YOU'RE VERY WELCOME.

24 IS THERE ANYTHING ELSE I CAN DO FOR THE PARTIES AT THIS
25 POINT?

1 MR. CARR?
2 MR. CARR: NO, YOUR HONOR. THAT'S IT FOR ME.
3 THANK YOU.
4 THE COURT: OKAY.
5 MS. CASSELMAN?
6 MS. CASSELMAN: NO, YOUR HONOR.
7 THANK YOU VERY MUCH.
8 THE COURT: ALL RIGHT.
9 THANK YOU, FOLKS. I THINK WE CAN GO AHEAD, MS. ESTRADA,
10 AND TAKE US OFF THE RECORD.
11 THE CLERK: THIS COURT IS ADJOURNED.
12 (PROCEEDINGS ADJOURNED.)
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I, Dorothy Babykin, attest that the foregoing proceedings provided to me
electronically were transcribed by me to the best of my ability.

/s/ Dorothy Babykin

Dorothy Babykin

Date: 8/18/23